

ETHICS ADVISORY PANEL
OPINION #94-41 REQUEST #507
Issued July 27, 1994

The inquiring attorney represented a city in Federal Court. Named defendants were the city and members of the city's zoning board in their official and individual capacities. On the eve of trial, the case against the zoning board members as plaintiffs in their individual capacity was dismissed. The suit proceeded against the city and the Board Members in their official capacities. Subsequently, a few zoning board members requested copies of the file which included various correspondence, pleadings, copies of case law, legal memoranda and interoffice memoranda between attorneys. The attorney questions whether or not he/she may produce only those documents which are a public record or whether he/she must produce all documents including the attorney's work product. The attorney states that the city hired the attorney and is paying the legal fees. In addition, various city officials have directed the attorney not to produce any documents. The attorney asks what if any obligation does he/she have to produce the file to the individual defendants. The attorney believes that the city is the client, pursuant to Rule 1.13 and the individual members were only the constituents through whom the city acted. The attorney states that the dismissal of the individual defendants in this matter buttresses this argument.

The zoning board members are clients and are therefore entitled to the file pursuant to Rule 1.17. According to the rule, upon termination a lawyer shall surrender papers and property to which the client is entitled. In addition our Supreme Court Disciplinary Counsel's Office has stated in memorandum form its policy relating to copying client files for the client. The memo states that "Papers which were prepared for the client's benefit must be furnished without cost of copying. Other papers, particularly internal notes, need not be furnished at all and to the extent the attorney consents to release them, forwarding may be conditioned upon a reasonable copying charge." In addition, "An attorney must furnish all "end products" whose preparation was paid for by the client, regardless of whether the client will pay for copying."

Regarding the inquiring attorney's statement that the city is paying the legal bill, Rule 1.8(f) states that regardless of who pays for the legal services, there should not be any interference with the client-lawyer relationship.